

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

No. 3:17-cr-00087-HZ-2

Plaintiff,

OPINION & ORDER

v.

CELSO MARROQUIN BENITEZ,

Defendant.

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Attorney for Plaintiff

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Pro se

HERNÁNDEZ, District Judge:

Defendant Celso Marroquin Benitez moves pro se for a reduction of his sentence pursuant to [18 U.S.C. § 3582\(c\)\(2\)](#). ECF 223. The Government opposes the Motion. ECF 225. For the following reasons, the Court denies the Motion.

BACKGROUND

On June 11, 2018, Defendant pled guilty to conspiracy to distribute and possess with the intent to distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. Plea Petition and Order Accepting Plea, ECF 119. Defendant was sentenced to 168 months. J. & Commitment 2, ECF 157. He had one criminal history point from a prior conviction. PSR ¶ 46, ECF 137; Statement of Reasons 1, ECF 158 (adopting PSR without changes). His total offense level was 35, and his criminal history category was I. Statement of Reasons 1. Defendant is currently serving his sentence at FCI Lompoc II. Defendant previously moved to vacate, correct, or set aside his sentence under 28 U.S.C. § 2255. ECF 162, 187. The Court denied the motion, and the Ninth Circuit affirmed. ECF 198, 205. Defendant filed the present Motion on May 13, 2024, and the Government responded on May 28, 2024.

STANDARDS

A federal district court generally “may not modify a term of imprisonment once it has been imposed[.]” [18 U.S.C. § 3582\(c\)](#); *see also* [Dillon v. United States](#), [560 U.S. 817](#), 824-25 (2010).

[I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to [28 U.S.C. 994\(o\)](#), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

18 U.S.C. § 3582(c)(2).

DISCUSSION

Defendant moves to reduce his sentence based on the enactment of Amendment 821 to the Sentencing Guidelines. Def. Mot. 1. Part A and Part B, Subpart 1, of Amendment 821 apply retroactively to qualifying defendants. [U.S.S.G. § 1B1.10\(d\)](#) (Nov. 1, 2023). Part A provides for elimination or reduction of so-called status points for certain defendants who committed their offense while subject to a criminal justice sentence. [U.S.S.G. § 4A1.1](#). Part B, Subpart 1, provides for a two-level reduction in offense levels for offenders who meet ten listed criteria. *Id.* [§ 4C1.1\(a\)](#). The first criterion is that “the defendant did not receive any criminal history points from Chapter Four, Part A.” *Id.* [§ 4C1.1\(a\)\(1\)](#).

The Government correctly states that Defendant is ineligible to reduce his sentence under Part B, Subpart 1, because he received one criminal history point under Chapter 4, Part A. Gov. Resp. 3 (citing PSR ¶ 46). *See also* Statement of Reasons (adopting PSR without changes). Because Defendant does not meet the first criterion of section 4C1.1, he is ineligible for the two-level reduction in his offense level. The Government also correctly points out that Defendant does not appear to base his Motion on Part A of Amendment 821, and that Part A does not apply because Defendant did not receive status points. Gov. Resp. 3 n.1. *See* PSR. As Defendant is not eligible for relief under Amendment 821, the Court need not address the sentencing factors or applicable policy statement.

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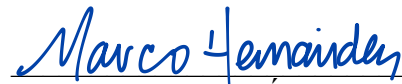
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CONCLUSION

Defendant's Motion for Sentence Reduction [223] is DENIED.

IT IS SO ORDERED.

DATED: June 21, 2024.



MARCO A. HERNÁNDEZ
United States District Judge